BILL J. MADDOX

IBLA 74-278 Decided March 10, 1976

Appeal from a decision of the Utah State Office, Bureau of Land Management, requiring consent to a stipulation for oil and gas lease offers U-21283 and U-21284.

Affirmed as modified, and remanded.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Stipulations

   It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Stipulations

   While "no surface occupancy" stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

3. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Stipulations

   The financial burden of complying with protective stipulations in oil and gas leases is the sole responsibility of the lessee.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell and Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bill J. Maddox on December 4, 1972, filed five noncompetitive public domain oil and gas lease offers covering approximately 10,772 acres of land located primarily in T. 28 and 29 S., R. 11 E., S.L.M., Wayne County, Utah. Two leases were issued effective January 1, 1973, with no surface disturbance stipulations; one lease has not yet issued.

As to the two remaining leases at issue here, the Utah State Office, Bureau of Land Management, issued decisions on February 14, 1974, requiring special stipulations of "no surface occupancy" to be executed prior to issuance of the leases. The special stipulations do permit directional drilling if it does not disturb the surface. The applicant declined to execute either the Special Stipulations or the Surface Disturbance Stipulations and filed a notice of appeal with the Utah State Office on March 14, 1974. 1/

By letter dated April 9, 1974, the Utah State Office modified its February 14, 1974, decision in certain respects, primarily to enlarge the open area available for exploration, but required execution of the special stipulations, as a condition precedent to issuance of the leases.

The lands in question are located on the northern edge of the picturesque canyon country of Utah within the Henry Mountain Planning Unit, the management plan of which presently is being updated relative to watershed, minerals, range, wildlife habitat, recreation and timber.

The reasons given by the State Office for the "no surface occupancy" stipulation on approximately half of the area in the two lease offers were that: (1) any intrusions of new roads and oil and gas development on the scenic landscape immediately adjacent to the highway (U-95) would be improper; (2) a new visitor center-resource management complex is being jointly planned by Bureau of Land Management, National Park Service, and State of Utah Parks and Recreation and Highway Department; and (3) some of the land adjacent to the Dirty Devil River has been proposed for study to determine if it qualifies for the Wild and Scenic River designation.

1/ In his appeal, appellant expressed willingness to sign the Surface Disturbance Stipulations absent the "no surface occupancy" stipulations.

Appellant claims in sum that the scenic values of the land can be adequately protected by the Surface Disturbance Stipulations which he is willing to execute; that the no surface occupancy stipulations are so stringent as to effectively prohibit the geological or geophysical evaluation of the lands and the development of potential producing oil and gas formations, and would prevent the lessee from exercising the basic rights granted by the leases; that directional drilling does not offer a viable alternative to enjoy these rights. Further, appellant argues that the subject lands were classified for multiple-use on February 1, 1968, without establishment of "no surface occupancy" areas, and that the procedures used by the Bureau of Land Management to establish the "no surface occupancy" areas were not in conformance with 43 CFR Subpart 2461.

[1] It is well established that the execution of appropriate special stipulations as a condition precedent to the issuance of oil and gas leases may be required at the discretion of the Secretary of the Interior in order to protect environmental, recreational, and other land use values. Duncan Miller, 16 IBLA 349 (1974); A. Helander, 15 IBLA 107 (1974); Ida Lee Anderson, 6 IBLA 314 (1972); John Oakason, 4 IBLA 79 (1971); 43 CFR 3109.2-1. Furthermore, the Secretary is obligated to support and implement the national policy expressed by Congress in the National Environmental Policy Act of 1969. 42 U.S.C. § 4331 (1970).

We, therefore, concur with the State Office's intent to preserve the natural beauty in this scenic area of the country. We do not find the requirement that a 1-mile strip of land along the highway be no surface occupancy, prima facie an unreasonable requirement as appellant contends. Nor do we find fault with the State Office's desire to protect sufficient area for a proposed visitor center.

We note that the area is included in the process of planning for further recreational and scenic use. Between the initial decision of March and the subsequent modification on April 9, 1974, approximately 400 acres of the U-21283 lease and 640 acres of the U-21284 lease were opened for use by appellant by deletions from the "no surface occupancy" stipulation. We presume the Utah State Office may open further land to appellant for oil and gas exploratory use, as and if developing plans reveal further land is not necessary for the planned recreational and scenic preserve.

[2] We are, however, concerned with appellant's contentions that the stipulations are so stringent as to effectively prohibit the geophysical evaluation of the lands and the development of potential producing oil and gas formations.

We have stated in A. Helander, supra at 109:

> While such [no surface occupancy] stipulations should be of sufficient efficacy to protect the environment, no lease should issue with stipulations so restrictive that the use of the land for any purpose associated with the production of oil and gas is totally precluded.

It would appear that the denial of even an access road to the open areas from highway U-95 might fit into this category. Should it be proven, as appellant contends is possible, that the only way to reasonably explore the open area is through access roads from U-95, the Utah State Office should either grant an exception to its "no surface occupancy" stipulation, or decline to issue any lease. See John Snyder, 15 IBLA 253 (1974).

The Secretary has the historic obligation to encourage the exploration and development of oil and gas on public lands. He also has the duty to see that the environment is also adequately protected. Other than the possible exceptions noted above, the Utah State Office has apparently made that balance here.

It becomes appellant's decision to determine, presumably after his own geophysical study of the open land, whether or not the financial costs are worthwhile to directionally drill under the "no surface occupancy" area.

[3] This Board has repeatedly held that the financial burden of complying with protective stipulations is the sole responsibility of the lessee. Duncan Miller, 16 IBLA 24 (1974); Duncan Miller, 15 IBLA 116 (1974); Duncan Miller, 12 IBLA 185 (1973). Furthermore, appellant is not precluded from requesting further modification of the Utah State Office's decision as the plans for environmental protection evolve and develop.

Appellant finally contends that the State Office failed to follow the procedures set forth at 43 CFR Subpart 2461. That regulation sets forth procedures to be followed when lands are classified or reclassified pursuant to 43 U.S.C. § 1411 et seq. (1970). The subject lands were classified for multiple use pursuant to that statute on February 1, 1968, and while the classification notice has the effect of segregating the land for some purposes, the land remained "open to all other applicable forms of appropriation, including mining and mineral leasing laws." 33 F.R. 2454 (1968). Appellant's argument is apparently based on the erroneous view that the designation of lands as requiring "no surface occupancy" stipulations in oil and gas leases is a change in the multiple use classification because the classification notice did not state that leases were to be made subject to such stipulations.

This designation did not segregate any land from appropriation under the mineral leasing laws and therefore did not reclassify any land. 2/ Requiring "no surface occupancy" stipulations as a condition precedent to issuance of an oil and gas lease is, as we have stated above, a proper exercise of discretion under the mineral leasing laws and is consistent with a multiple use classification which leaves land available for oil and gas leasing. Because there has been no reclassification of the land, the procedural requirements of 43 CFR Subpart 2461 are not applicable.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified and remanded for further action not inconsistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

2/ 43 U.S.C. § 1414 (1970) indicates the segregative effect of a classification. That section states: "Publication of notice in the Federal Register by the Secretary of the Interior of a proposed classification under this subchapter shall have the effect of segregating such land from settlement, location, sale, selection, entry, lease, or other formal disposal under the public land laws, including the mining and mineral leasing laws, except to the extent that the proposed classification or subsequent notification thereof specifies that the land shall remain open for one or more of such forms of disposal under the public land laws."